



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rider Land and Development Co.

File: B-245490

Date: November 12, 1991

Roger M. Hughes, Esq., and Susan J. Wolfe, Esq., Bell, Rosenberg & Hughes, for the protester.
L. James Tillman, Department of Energy, for the agency.
Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency allowed insufficient time for submission of best and final offers after issuance of a material amendment to the solicitation is dismissed as untimely where the protest was not filed before the due date for receipt of best and final offers.

DECISION

Rider Land & Development Company protests the award of a contract to lease office space under request for proposals (RFP) LA-099754, issued by Westinghouse Hanford Company (WHC), a management and operating contractor for the Department of Energy (DOE). Rider challenges the agency's amendment of a material solicitation provision after the submission of best and final offers (BAFOs).

We dismiss the protest as untimely.

The RFP requested proposals to lease 100,000 square feet of office space, for a term of 10 years with options to extend the lease for up to two additional 5-year terms. The RFP contained a limitation of funding clause which noted that WHC required the leased space to perform contractual obligations with DOE and depended upon DOE to furnish the funding for the lease. It also provided that if DOE did not furnish appropriate funds for the lease, WHC could terminate the lease without liability. Rider and another offeror submitted proposals by the January 21, 1991, closing date. After evaluation of the proposals and receipt of BAFOs, WHC, at the direction of DOE, amended the RFP to provide a 1-year cancellation clause.

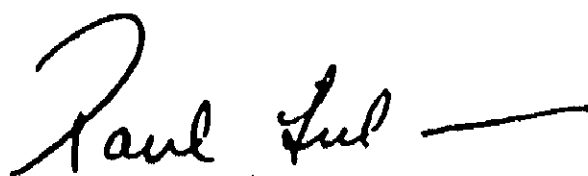
The offerors were notified of the amendment on Monday, August 19, and were advised to submit BAFOs by 4:00 p.m. on Thursday, August 22. Rider responded with a letter on August 22, in which it reiterated its earlier BAFO prices, expressed confusion as to the meaning of the new clause, and suggested a change to the limitation of funding clause to incorporate the 1-year cancellation provision. When WHC awarded the lease to the other offeror, Rider filed this protest with our Office.

Rider contends that the addition of the cancellation clause prevents it from obtaining necessary financing for the project, and that WHC provided insufficient time to respond to the amendment. DOE argues, and we agree, that the protest is untimely since it was filed after the closing date for receipt of BAFOs. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the time for closing. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

This regulation includes challenges to alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation. In such cases, the alleged impropriety must be protested not later than the next closing date for receipt of proposals following the incorporation. NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330; Pacific Instruments, Inc., B-228274, Oct. 21, 1987, 87-2 CPD ¶ 380. Accordingly, Rider's protest was untimely filed.

These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent these rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

The protest is dismissed.



Paul Lieberman
Assistant General Counsel